IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3445 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NASIM EBRAHIM RAVJI
Versus
KHURSHIDBEN AHMEDALI RAVJI AND ANOTHER

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Appearance :
MR RD DAVE for Applicant.
MS MEGHA JANI for Respondent No. 1.
MS MANISHA SHAH, APP for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2006

ORAL JUDGMENT

By filing this application, the applicant has prayed that complaint registered as C.R.No.I-462/1998 before Rajkot Taluka Police Station may be quashed. Aforesaid complaint is filed before police by respondent No.1

herein on the ground that the accused has prepared false documents. According to the complainant, the accused is her cousin brother and even though he had no right to deal with the property in question, which is part and parcel of family trust, he has prepared some fabricated documents and dealt with the property. It is alleged that the documents in question are forged and on the basis of that sell has been effected. It is also alleged in the complaint that even though the complainant gave public notice in a newspaper, namely, Jay Hind Newspaper on 25-5-1998 yet the property mentioned in the complaint has been illegally sold. It is alleged in the complaint that except the beneficiaries mentioned in the family trust deed, no one is having any right in the said property. On this and such other averments, aforesaid complaint is filed. When the complaint is at police investigation stage, original accused has approached this Court. This matter is pending before the Court since 1998 and the Court is informed that investigation is stayed during the pendency of this application.

Mr.Dave, learned advocate for the applicant very vehemently submitted that the applicant is not the owner of the property. He further submitted that it is a trust property and trust has taken decision for transferring the property for which the applicant should not have been subjected to criminal case. Mr.Dave submitted that a civil suit is also pending in this connection. He submitted that there is voluminous documentary evidence to show that the complaint is absolutely false and frivolous and it has no legs to stand.

It is required to be noted that at this stage of considering the case for quashing, this Court is required to read only the averments made in

the complaint. Whatever Mr.Dave states may be correct, however, it is required to be investigated by the investigating officer. I have no doubt that if appropriate material is made available to the investigating officer during investigation, investigating officer will consider the same in accordance with law, as impartial investigation is required to be made by the investigating officer. In a quashing petition, it is difficult for this Court to find out the title of the property by making rigorous inquiry in that regard. After going through all aforesaid aspects and relevant documents and material, if it is found that the complaint is of civil nature, naturally, investigating officer can file appropriate report as provided under the law. As per the judgement of the Supreme Court in State of M.P. v. Awadh Kishore Gupta and others reported in (2004) 1 SCC 691, defence of the applicant cannot be considered by this Court in a quashing proceedings.

In that view of the matter, it would not be just and proper to delay the investigation any further. It is once again reiterated that police may carry out appropriate investigation in accordance with law. It is not possible to accept the say of Mr.Dave that investigating officer may cause any harassment to the applicant.

In view of what is stated herein above, it cannot be said that this is the rarest of rare case, wherein investigation is required to be intercepted. After the investigation is over, if any adverse report is filed against the applicant, it is always open to the applicant to take appropriate recourse as per law.

In view of what is stated herein above, this application is rejected.

Rule is discharged. Interim relief granted earlier stands vacated. It is clarified that defence of the applicant is not considered by this Court at the time of deciding this application, which is for quashing.

(P.B.MAJMUDAR, J.)

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